



August 23, 2000

Mr. Duncan R. Fox  
Deputy General Counsel  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR2000-3228

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138353.

The Texas Department of Public Safety (the "department") received a written request for various documents pertaining to the "Intoxilyzer 5000." You state that the department will release some responsive information to the requestor. You inquire, however, whether the service manual for the Intoxilyzer 5000 is excepted from required public disclosure.

You do not contend that the service manual is excepted from public disclosure; rather, you have sought a decision from this office pursuant to section 552.305 of the Government Code, which authorizes parties with a privacy or proprietary interest in requested information to submit arguments to this office as to why the information is excepted from required public disclosure. In accordance with section 552.305(d), the department notified the manufacturers of the Intoxilyzer 5000 of the current records request and invited them to submit comments to this office as to why the service manual is excepted from public disclosure.

We note at the outset that an employee of the department has executed a confidentiality agreement with the manufacturer of the Intoxilyzer 5000 that purports to restrict subsequent access to the service manual. However, information is not confidential under the Public Information Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Public Information Act. Attorney General Opinion JM-672 (1987). Consequently, unless the requested information

falls within one of the act's exceptions to disclosure, it must be released, notwithstanding any contract between the department and the manufacturer specifying otherwise.

This office did not receive a response to your notice from the manufacturer. Consequently, this office has no basis on which to conclude that any portion of the service manual is excepted from required public disclosure under the Public Information Act. Accordingly, we conclude that the department must release the service manual to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

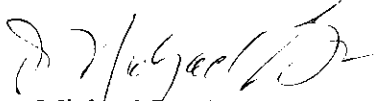
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Jay Burns", is written over the typed name.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/ljp

Ref: ID# 138353

Encl. Submitted documents

cc: Mr. Mark Cashion  
Law Office of Mark Cashion, P.C.  
408 West Hondo Avenue  
Devine, Texas 78016  
(w/o enclosures)